

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

RICKY TYRONE FOSTER,

Plaintiff,

v.

KAWEAH DELTA MEDICAL CENTER,  
et. al.,

Defendants.

Case No. 1:21-cv-1044-NONE-HBK (PC)

ORDER PROVIDING NOTICE TO  
PLAINTIFF OF REQUIREMENTS FOR  
OPPOSING SUMMARY JUDGMENT  
MOTION

(Doc. No. 12)

This matter comes before the Court upon review of the file that was removed from the Tulare County Superior Court. (Doc. No. 1). Plaintiff Ricky Tyrone Foster initiated this action proceeding *pro se* as a prisoner within the California Department of Corrections. On September 15, 2021, Defendants filed a motion for summary judgment. (Doc. No. 16). A summary judgment motion is a dispositive motion. An order granting a summary judgment motion will result in the final adjudication of this matter without a trial.

Pursuant to *Woods v. Carey*, 684 F.3d 934 (9th Cir. 2012), *Rand v. Rowland*, 154 F.3d 952 (9th Cir. 1998), and *Klingele v. Eikenberry*, 849 F.2d 409 (9th Cir. 1988), the Court notifies Plaintiff of the following rights and requirements for opposing the motion:

- Unless otherwise ordered, all motions for summary judgment are briefed pursuant to Local Rule 230(l).
- Plaintiff is required to file an opposition or a statement of non-opposition to

1 Defendants' motion for summary judgment. Local Rule 230(l). If Plaintiff fails to  
 2 file an opposition or a statement of non-opposition to the motion, this action may  
 3 be dismissed, with prejudice, for failure to prosecute. The opposition or statement  
 4 of non-opposition must be filed not more than 21 days after the date of service of  
 5 the motion. *Id.*

- 6 • A motion for summary judgment is a request for judgment on some or all of  
     7 Plaintiff's claims in favor of Defendants without trial. Fed. R. Civ. P. 56(a).  
     8 Defendants' motion sets forth the facts which they contend are not reasonably  
     9 subject to dispute and that entitle them to judgment as a matter of law. Fed. R.  
 10 Civ. P. 56(c). This is called the Statement of Undisputed Facts. Local Rule  
 11 260(a).
- 12 • Plaintiff has the right to oppose a motion for summary judgment. To oppose the  
     13 motion, Plaintiff must show proof of his claims. Plaintiff may agree with the facts  
     14 set forth in Defendants' motion but argue that Defendants are not entitled to  
     15 judgment as a matter of law.
- 16 • In the alternative, if Plaintiff does not agree with the facts set forth in Defendants'  
     17 motion, he may show that Defendants' facts are disputed in one or more of the  
     18 following ways: (1) Plaintiff may rely upon statements made under the penalty of  
     19 perjury in the complaint or the opposition if (a) the complaint or opposition shows  
     20 that Plaintiff has personal knowledge of the matters stated and (b) Plaintiff calls to  
     21 the Court's attention those parts of the complaint or opposition upon which  
     22 Plaintiff relies; (2) Plaintiff may serve and file declarations setting forth the facts  
     23 which Plaintiff believes prove his claims;<sup>1</sup> (3) Plaintiff may rely upon written  
     24 records but Plaintiff must prove that the records are what he claims they are;<sup>2</sup> or

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25     <sup>1</sup> A declaration is a written statement setting forth facts: (1) which are admissible in evidence, (2) which  
 26 are based on the personal knowledge of the person giving the statement, and (3) to which the person giving  
 27 the statement is competent to testify. 28 U.S.C. § 1746; Fed. R. Civ. P. 56(c)(4). A declaration must be  
 28 dated and signed under penalty of perjury as follows: "I declare (or certify, verify or state) under penalty  
     of perjury that the foregoing is true and correct. Executed on (date). (Signature)." 28 U.S.C. § 1746.

<sup>2</sup> Sworn or certified copies of all papers referred to in the declaration must be included and served on the

(4) Plaintiff may rely upon all or any part of the transcript of one or more depositions, answers to interrogatories, or admissions obtained in this proceeding. Should Plaintiff fail to contradict Defendants' motion with declarations or other evidence, Defendants' evidence will be taken as truth, and final judgment may be entered without a full trial. Fed. R. Civ. P. 56(e).

- In opposing Defendants' motion for summary judgment, Local Rule 260(b) requires Plaintiff to reproduce Defendants' itemized facts in the Statement of Undisputed Facts and admit those facts which are undisputed and deny those which are disputed. If Plaintiff disputes (denies) a fact, Plaintiff must cite to the evidence used to support that denial (e.g., pleading, declaration, deposition, interrogatory answer, admission, or other document). Local Rule 260(b).
  - If discovery has not yet been opened, or if discovery is still open and Plaintiff is not yet able to present facts to justify the opposition to the motion, the Court will consider a request to postpone consideration of Defendants' motion. Fed. R. Civ. P. 56(d). Any request to postpone consideration of Defendants' motion for summary judgment must include the following: (1) a declaration setting forth the specific facts Plaintiff hopes to elicit from further discovery, (2) a showing that the facts exist, and (3) a showing that the facts are essential to opposing the motion for summary judgment. *Blough v. Holland Realty, Inc.*, 574 F.3d 1084, 1091 n.5 (9th Cir. 2009); *Tatum v. City & Cty. of San Francisco*, 441 F.3d 1090, 1100-01 (9th Cir. 2006); *California v. Campbell*, 138 F.3d 772, 779 (9th Cir. 1998). The request to postpone the motion for summary judgment must identify what information is sought and how it would preclude summary judgment. *Blough*, 574 F.3d at 1091 n. 5; *Tatum*, 441 F.3d at 1100-01; *Margolis v. Ryan*, 140 F.3d 850, 853 (9th Cir. 1998); Local Rule 260(b).
  - Unsigned declarations will be stricken, and declarations not signed under penalty

opposing party. Fed. R. Civ. P. 56(e).

1 of perjury have no evidentiary value.

- 2 • The failure of any party to comply with this order, the Federal Rules of Civil  
3 Procedure, or the Local Rules of the Eastern District of California may result in the  
4 imposition of sanctions including but not limited to dismissal of the action or entry  
5 of default.

6 Accordingly, it is **ORDERED**:

- 7 1. If Plaintiff wishes to oppose Defendants' motion for summary judgment, he shall do so  
8 within thirty (30) days of receipt of this order in compliance with Federal Rule of Civil Procedure  
9 56 and Local Rule 260;
- 10 2. The Court will deem no response from Plaintiff to mean he does not oppose  
11 Defendants' motion; and
- 12 3. Any request for an extension of time of this deadline must be filed on or before it  
13 expires and must be supported by good cause.

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15 Dated: September 16, 2021

  
16 HELENA M. BARCH-KUCHTA  
17 UNITED STATES MAGISTRATE JUDGE  
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